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JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

DRESICK FARMS, INC.

DEFENDANTS

MIVCO PACKING COMPANY, LLC

(b) County of Residence of First Listed Plaintiff FRESNO COUNTY
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Marion I. Quesenberry, Rynn & Janowsky, LLP
P.O. Box 20799, Oakland, CA 94620
(510) 705-8894

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	610 Agriculture	400 State Reapportionment
120 Marine	310 Airplane	362 Personal Injury—Med. Malpractice	422 Appeal 28 USC 158	410 Antitrust
130 Miller Act	315 Airplane Product Liability	365 Personal Injury—Product Liability	423 Withdrawal 28 USC 157	430 Banks and Banking
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	430 Commerce	450 Deportation
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	370 Other Fraud	460 Racketeer Influenced and Corrupt Organizations	470 99
151 Medicare Act	340 Marine	371 Truth in Lending	480 Copyrights	480 Consumer Credit
152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	380 Other Personal Property Damage	830 Patent	490 Cable/Sat TV
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	385 Property Damage	840 Trademark	810 Selective Service
160 Stockholders' Suits	355 Motor Vehicle	390 Other Product Liability	PROPERTY RIGHTS	850 Securities/Commodities/ Exchange
190 Other Contract	Product Liability	400 Other Personal Injury	820 Copyrights	875 Customer Challenge
195 Contract Product Liability	360 Other Personal Injury	410 Voting	861 HIA (1395ff)	12 USC 3410
196 Franchise		442 Employment	862 Black Lung (923)	890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	863 DIWC/DIWW (405g)	<input checked="" type="checkbox"/> 891 Agricultural Acts
210 Land Condemnation	443 Housing/Accommodations	510 Motions to Vacate Sentence	864 SSID Title XVI	892 Economic Stabilization Act
220 Foreclosure	444 Welfare	Habeas Corpus:	865 RSI (405g)	893 Environmental Matters
230 Rent Lease & Ejectment	445 Amer. w/Disabilities - Employment	530 General	870 Taxes (U.S. Plaintiff or Defendant)	894 Energy Allocation Act
240 Torts to Land	446 Amer. w/Disabilities - Other	535 Death Penalty	871 IRS—Third Party 26 USC 7609	895 Freedom of Information Act
245 Tort Product Liability	440 Other Civil Rights	540 Mandamus & Other		900Appeal of Fee Determination Under Equal Access to Justice
290 All Other Real Property		550 Civil Rights		950 Constitutionality of State Statutes
		555 Prison Condition		
		IMMIGRATION		
		462 Naturalization Application		
		463 Habeas Corpus – Alien Detainee		
		465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or ReopenedTransferred from
 5 another district
(specify) 6 Multidistrict Litigation 7 Judge from Magistrate Judgment**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
7 U.S.C. section 499a et seq.

Brief description of cause:

Violation of Perishable Agricultural Commodities Act (failure to pay promptly) and breach of contract

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ 267,025CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)** SAN FRANCISCO/OAKLAND SAN JOSE

DATE

July 1, 2008

SIGNATURE OF ATTORNEY OF RECORD

1 Marion I. Quesenberry, Cal. SBN 072308
 2 RYNN & JANOWSKY, LLP
 3 P.O. Box 20799
 4 Oakland, CA 94620
 Telephone: (510) 705-8894
 Facsimile: (510) 705-8737
 E-mail: marion@rjlaw.com

5 Attorneys for Plaintiff
 6 Dresick Farms, Inc.

E filing

FILED

JUL - 2 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

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 iss.
 C.A.

7 UNITED STATES DISTRICT COURT
 8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 DRESICK FARMS, INC.,

CASE NO. ADR
CO8-03175

10 Plaintiff,
 11 v.
 12 MIVCO PACKING COMPANY, LLC,
 13 Defendant.

**COMPLAINT FOR VIOLATION OF
 THE PERISHABLE AGRICULTURAL
 COMMODITIES ACT [7 U.S.C.
 §499b(4)] & BREACH OF CONTRACT**

15 Plaintiff Dresick Farms, Inc. ("Dresick Farms") complains and alleges as follows:

16 **I.**

17 **JURISDICTION AND VENUE**

18 1. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331, as this
 action arises under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499b(4). In
 addition, under 28 U.S.C. § 1367(a), this Court has jurisdiction of any state law claims and
 remedies by virtue of the Court's supplemental jurisdiction, because the state law claims form
 part of the same case or controversy and involve a common nucleus of operative facts. Venue is
 proper under 28 U.S.C. § 1331(b).

19 2. Plaintiff Dresick Farms is and was during all material times a California
 corporation, with its principal place of business in Huron, California.

GO 44 SEC.
 NOTICE OF ASSIGNMENT
 TO MAGISTRATE JUDGE

1 3. Plaintiff is informed and believes and thereon alleges that Defendant Mivco
2 Packing Company, LLC (“Mivco”) is and was during all material times a California limited
3 liability company with its principal place of business in Salinas, California.

II.

INTRADISTRICT ASSIGNMENT

6 4. This action arose in Salinas, California. Defendant Mivco's principal place of
7 business is in Salinas, California. Plaintiff alleges in this Complaint that Defendant owes
8 Plaintiff \$267,025.00, pursuant to a contract in which Defendant Mivco agreed to purchase
9 produce from Plaintiff. The contract was entered into in Salinas, California.

III.

FIRST CAUSE OF ACTION

(Violation Of PACA: Failure To Pay Promptly And To Perform Duties Under The Contract)

5. Plaintiff realleges and incorporates by reference paragraphs 1 through 5 of this Complaint as though fully set forth in this paragraph 6.

6. Plaintiff Dresick Farms is and was at all relevant times engaged in the business of growing, packing, and shipping fresh fruit and vegetables.

7. At all relevant times, Defendant Mivco sold and shipped perishable agricultural commodities – as defined by the Perishable Agricultural Commodities Act, 7 U.S.C. §§ 499a *et seq.* (“PACA”) – throughout the United States, and is and was licensed by the United States Department of Agriculture (“USDA”) as a commission merchant, dealer, and/or broker of perishable agricultural commodities (USDA license #20000852).

8. In or about December 2006, Plaintiff Dresick Farms and Defendant Mivco entered into a written contract in which Plaintiff agreed to grow fresh lettuce and Defendant agreed to purchase it for \$534,050.00.

1 9. Although Plaintiff Dresick Farms grew the lettuce as agreed and delivered it to
2 Defendant Mivco, Defendant only paid Plaintiff \$267,025.00 of the sum owed. Specifically,
3 Defendant Mivco failed to make a payment of \$133,512.50 that was due on March 1, 2007, and
4 it failed to make a payment of \$133,512.50 that was due on April 1, 2007, and consequently,
5 \$267,025.00 remains well past due and still owing from Defendant Mivco to Plaintiff.

6 10. The Perishable Agricultural Commodities Act, 7 U.S.C. § 499b(4), provides that
7 “it shall be unlawful” for “any commission merchant, dealer, or broker” – such as Defendant
8 Mivco – to fail or refuse to “make full payment promptly” in respect to any transaction involving
9 perishable agricultural commodities “to the person with whom such transaction is had” or “to
10 fail, without reasonable cause, to perform any specification or duty, express or implied, arising
11 out of any undertaking in connection with such transaction.”

12 11. By failing to make full payment promptly, as promised in its contract with
13 Plaintiff Dresick Farms, Defendant Mivco violated 7 U.S.C. § 499b(4).

14 12. As a direct and proximate result of Defendant’s wrongful acts and omissions,
15 Plaintiff has been damaged in the sum of \$267,025.00.

16 13. In addition, the contract between Plaintiff and Defendant provides that should any
17 action in law or equity be necessary to enforce the terms of the contract, the prevailing party
18 shall be entitled to reasonable attorneys’ fees and costs, including attorneys’ fees and costs in
19 bankruptcy proceedings.

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IV.

SECOND CAUSE OF ACTION
(Breach of Contract)

14. Plaintiff realleges and incorporates by reference paragraphs 1 through 13 of this
Complaint as though fully set forth in this paragraph 14.

15. Plaintiff has fulfilled all of its obligations under the contract with Defendant
Mivco; however, Defendant has failed to pay Plaintiff the sum that it agreed to pay for the fresh
lettuce that Defendant purchased from Plaintiff.

16. Plaintiff has repeatedly demanded that Defendant pay the \$267,025.00 that is well
past due; however, in breach of its contract with Plaintiff, Defendant Mivco has failed to do so.

17. As a direct and proximate result of Defendant Mivco's breach of the contract with
Plaintiff, Plaintiff have been damaged in the sum of \$267,025.00, plus attorneys' fees and costs
incurred in enforcing the contract.

18. **WHEREFORE**, Plaintiff Dresick Farms prays for judgment against Defendant Mivco as
follows:

- A. For damages of \$267,025.00;
- B. For interest at the highest rate allowable from the date the obligation became due and
payable to Plaintiff until fully paid;
- C. For attorneys' fees and costs; and
- D. For such other and further relief as the Court may deem just and proper.

20 Date: July 1, 2008

21 RYNN & JANOWSKY, LLP

22 By:

23 MARION I. QUESENBERY
24 Attorneys for Plaintiff
Dresick Farms, Inc.